

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RUPAN CHAKMA, SULOY TRIPORA, TAPAN KANTI  
TANCHANGYA, TIYANIT KAEWPAN, and PRAMITA  
CHAKMA, on behalf of themselves and others similarly  
situated,

Plaintiffs,

- against -

SUSHI KATSUEI, INC. d/b/a SUSHI KATSUEI PARK  
SLOPE, ROYAL KATSUEI, INC. d/ba SUSHI KATSUEI  
WEST VILLAGE, AYE AYE SWE, and AUNG KO WIN,

Defendants.

Case No. 1:23-cv-07804-KPF

**DECLARATION OF AUNG  
KO WIN IN OPPOSITION TO  
PLAINTIFFS' MOTION  
FOR CONDITIONAL  
CERTIFICATION OF CLASS**

I, Aung Ko Win, under penalty of perjury, affirm as follows:

1. My name Aung Ko Win, and I am a Defendant in the above-captioned case.
2. I am a resident of the County of Kings, New York.
3. I am the sole shareholder, operator, and manager at SUSHI KATSUEI, INC. d/b/a SUSHI KATSUEI PARK SLOPE (“Sushi Katsuei” or “SK”), an omakase restaurant located at 210 7<sup>th</sup> Ave., Brooklyn New York 11225 since 2013. I make all the operational and managerial decisions, including but not limited to, hiring and firing, setting the restaurant workers’ rates of pay, and work schedules.
4. Sushi Katsuei is currently operating its omakase restaurant business on Mondays and from Wednesday through Sunday between around 4:00 pm and 9:30 pm. Sushi Katsuei is closed on Tuesdays.
5. At Sushi Katsuei, I work as a sushi chef, but I am also responsible for taking care of various aspects of Sushi Katsuei’s restaurant business, such as developing and making the

“house-secret” sauce recipe(s), finding and selecting the best food ingredient(s), and handling the restaurant’s finances.

6. Sushi Katsuei hired and/or hires various types of staff members who can perform different duties in different sections of the restaurant. For instance, servers work in the dining area and around the sushi bar, hosts/hostesses work at the entrance and seat and present menus to the customers in the dining area and/or sushi bar, the sushi chefs work at the sushi bar and a bartender works at the “pantry area” near the kitchen.

7. Plaintiffs SULOY TRIPORA (“Plaintiff Tripora” or “Plaintiff Tripura”), PRAMITA CHAKMA (“Plaintiff P.Chakma”), and TIYANIT KAEWPAN (“Plaintiff Kaewpan”) worked as *servers* at Sushi Katsuei.

8. Upon information and belief, Suloy Chandra Tripura is named as Plaintiff Tripora in this action.

9. Plaintiff TAPAN KANTI TANCHANGYA (“Plaintiff Tanchangya”) worked as a *server or host* at Sushi Katsuei.

10. While Plaintiffs Tripora and P.Chakma primarily worked as *full-time* servers, Plaintiffs Tanchangya and Kawepan worked as *part-time* servers at Sushi Katsuei.

11. Specifically, Plaintiff Kaewpan worked as little as 4.85 hours per week as a part-time server, except for only one week that she worked 40.08 hours in May 2022. On average, Plaintiff Kaewpan generally worked between 15 and 25 hours per week, and she never worked more than 34 hours per week throughout her employment at Sushi Katsuei.

12. When Plaintiff Tanchangya only worked as a server specifically in 2018, he generally worked part-time. Plaintiff Tanchangya worked between 25 hours and 37 hours per

week on average, except for the four (4) weeks in total, that he worked 40 or a little over 40 hours per week.

13. Unlike other Plaintiffs named in this action, Plaintiff Tanchangya worked as a *host* (only) from May 17, 2021 until June 13, 2021. While Plaintiff Tanchangya performed his duties as a *host*, Plaintiff Tanchangya received an increased hourly rates according to his job position at Sushi Katsuei.

14. Plaintiff RUPAN CHAKMA (“Plaintiff R.Chakma”) primary worked as a bartender at the “pantry section” of Sushi Katsuei’s restaurant.

15. Upon information and belief, Plaintiff R.Chakma had a drinking problem.

16. While working as a bartender at the “pantry section” behind Sushi Katsuei’s kitchen, Plaintiff R.Chakma often drank alcoholic beverage(s) straight from the bottle(s) whenever he saw leftover alcohol in the drink bottle.

17. Since R.Chakma primarily worked as a bartender at Sushi Katsuei, he was not required to take the orders and serve food dishes to the customers while the servers were required to take customers’ orders and serve food dishes and cups of water to the customers’ dining tables.

**As to Plaintiffs Tripora, Kawepan, and P.Chakma (only worked as “servers”)**

18. Plaintiff Tripora worked as a server at Sushi Katsuei from October 24, 2017 to March 16, 2020, and again from March 5, 2021 until May 20, 2023.

19. Throughout Plaintiff Tripora’s tenure at Sushi Katsuei, he only worked as a server.

20. Sushi Katsuei set Plaintiff Tripora’s hourly rate at least the minimum wage rate(s) and issued his compensations accordingly, including his portion of tips.

21. On certain weeks, Plaintiff Tripora worked less than 40 hours per, he received at least minimum wage rates each hour that he worked. On the weeks that Plaintiff Tripora worked more than 40 hours per week, Plaintiff Tripora received all of his overtime compensations, in addition to receiving the amount(s) of tips that she was entitled to receive.

**As to Plaintiffs Tanchangya (worked as a server and host)**

22. Plaintiff Tanchangya worked for Sushi Katsuei from April 25, 2017 until March 16, 2020 as a *server*; and from May 17, 2021 until June 13, 2021 as a *host*.

23. From April 25, 2017 to March 16, 2020, Plaintiff Tanchangya only worked as a *server*. During this period, Sushi Katsuei set Plaintiff Tanchangya's hourly rate at least the minimum wage rate(s) and issued his compensations accordingly, including his portion of tips.

24. From May 17, 2021 until June 13, 2021, Plaintiff Tanchangya only worked as a *host*. While Plaintiff Tanchangya was working as a *host*, Plaintiff Tanchangya received \$24.00 or \$27.00 per hour during that period.

25. When Plaintiff Tanchangya worked as a *host* for the time period between May 17, 2021 and June 13, 2021, he received \$24.00 or \$27.00 per hour. Plaintiffs P. Chakma and Tripora worked as *servers*, and R.Chakma worked as a *bartender*. At that time, Plaintiffs P. Chakma and Tripora received at least minimum wage rate(s), but lower than the amount of hourly rates Plaintiff Tanchangya received, in addition to receiving sufficient amount of tips each hour that they served Sushi Katsuei's customers.

**As to Plaintiff R.Chakma (worked as a bartender server at the "Pantry Section")**

26. Plaintiff R.Chakma only worked as a bartender at Sushi Katsuei from December 6, 2018 to March 16, 2020, and again from August 29, 2022 until July 16, 2023.

27. Throughout Plaintiff R.Chakma's tenure at Sushi Katsuei, he worked as a bartender.

28. Sushi Katsuei set Plaintiff R. Chakma's hourly rate(s) at least the minimum wage rate(s) and issued his compensations accordingly, including his portion of the tips paid by Sushi Katsuei's customers.

29. On certain weeks, Plaintiff R. Chakma worked less than 40 hours per week, he received at least minimum wage rate each hour that he worked. On the weeks that Plaintiff R. Chakma worked more than 40 hours per week, he received all of his overtime compensation, in addition to receiving the amount(s) of tips that he was entitled to receive.

**As to Plaintiffs Tanchangya and Tripora (performed different number of shift(s) per day and worked at different hours- as Plaintiff Tanchangya generally performed only one shift per day while Plaintiff Tripora performed two (2) shifts on the Same Day, specifically in 2018.**

30. Specially from July 2018 to December 2018, Plaintiff Tanchangya performed *one shift* per day in the evening while Plaintiff Tripora generally performed *two shifts* on the same day, one shift in the morning and the second shift in the evening.

31. In 2018, Plaintiff Tanchangya generally performed his shift between around 4:00 pm and 6:00 pm and worked until around 10:45 pm. During the same time period, Plaintiff Tripora performed his *first shift* in the morning from around 11:00 am until 3:00 pm and began his *second shift* in the evening from 5:30 pm until around 10:30pm – 11:00 pm.

**Plaintiffs Kaewpan, Tripora, and R.Chakma Received Their Compensations on a "Bi-Weekly" or "Weekly" Basis While Plaintiffs P.Chakma and Tanchangya Received Their Compensations "Bi-Weekly."**

32. Sushi Katsuei is the first restaurant that I have ever operated in my life after working for multiple employers for approximately 30 years. Before I came to the U.S., I worked as a sushi chef for a restaurant(s) in Japan for 10 years. Thereafter, I continued to improve my skills as a sushi chef for 20 more years after relocating myself to the United States.

33. Before I opened Sushi Katsuei, I had zero experience as to how to operate a restaurant and pay the restaurant's workers.

34. Due to my lack of knowledge of the law, I was ignorant that I believed that Sushi Katsuei could pay its servers on a bi-weekly basis, and it would be in compliance with the law. Perhaps, I might have formed my (mistaken) belief as I was also paid on a bi-weekly basis while I was working for my former employers at their restaurants before I incorporated Sushi Katsuei.

35. Sushi Katsuei began paying the servers on a weekly basis since October 31, 2022, as soon as I learned the fact that the restaurant's servers were supposed to be paid on a weekly basis.

36. Only three (3) Plaintiffs (Plaintiffs Kaewpan, Tripora, and R.Chakma), out of the five (5) named Plaintiffs, received their compensations on a weekly basis since they worked on or after October 31, 2022.

37. Plaintiffs Kaewpan worked from August 19, 2021 until June 23, 2023; Tripora worked from October 24, 2017 to March 16, 2020, and again from March 5, 2021 until May 20, 2023; and R.Chakma worked from December 6, 2018 until March 16, 2020 and again from August 29, 2020 until July 16, 2023 while the rest of the named Plaintiffs, P.Chakma and Tanchangya only worked from February 26, 2021 until August 11, 2021 (as to P.Chakma) and from April 25, 2017 until March 16, 2020 [as a server] and again, from May 17, 2021 until June 13, 2021 [as a host] (as to Tanchangya).

38. To the best of my knowledge, no more than three or four new servers joined Sushi Katsuei since October 31, 2022 to date. Unlike the named Plaintiffs in this action who received their compensation on a bi-weekly *or* weekly basis depending on the time period(s) (e.g., before or after October 31, 2022), Sushi Katsuei regularly paid its servers, including the Plaintiffs Kaewpan, Tripora, and R.Chakma, on a weekly basis *only* when they worked/work on or after October 31, 2022.

**Sushi Katsuei and Royal Katsuei Are Independently Owned, Operated, and Managed by Each of the Individual Defendants, Despite That They Have a Family Relationship.**

39. Ms. Aye-Aye Swe (“Aye-Aye” or “my wife”) is my wife.

40. Upon information and belief, Aye-Aye incorporated her restaurant under the name of “Royal Katsuei Inc.” in or around November 2016. Aye-Aye, on her own, began operating Royal Katsuei since early 2017.

41. Although Aye-Aye is my wife, she did not let me (and I was unable to) get involved in any part of the Royal Katsuei’s restaurant business operations.

42. I did not hire and/or fire any of Royal Katsuei’s workers. Upon information and belief, Aye-Aye had the sole authority to make such decisions.

43. I did not manage and/or supervise any of Royal Katsuei’s staff members.

44. I did not set any of the Royal Katsuei staff members’ work schedules nor did I determine their rates of compensations.

45. My wife had the sole discretion to set Royal Katsuei staff members’ work schedules and their hourly rates.

46. Upon information and belief, Royal Katsuei generally set the servers hourly rate(s) higher than Sushi Katsuei's servers, and Royal Katsuei paid its servers at a various range of hourly rates depending in their experience and qualifications.

47. I recall that at certain point after Royal Katsuei began its restaurant operation, Aye-Aye often mentioned to me that Royal Katsuei needed a "consultant" to further improve the quality of the food ingredient, specifically the fish.

48. Since I have been working as a sushi chef for almost 30 years, I obtain my knowledge and skills to select the best-quality food ingredient for omakase businesses.

49. Around the time that my wife gave a birth to our baby girl in 2022, Aye-Aye and I have been rotating our baby-sitting duties. Since then, I was not able to physically present to work at Sushi Katsuei as much as I used to be because I had to help my wife and share the responsibility to take care of our baby girl.

**Mia-Mia Swe Worked as a Mere Employee At Sushi Katsuei, and She Did Not Have Any Authority to Work More Than Just a Server or General Restaurant Support Staff**

50. Sushi Katsuei hired Ms. Mia-Mia Swe ("Ms. M. Swe") to primarily work as a server.

51. Upon information and belief Ms. M. Swe grew up in Japan while my wife lived there. To the best of my knowledge, my wife and Ms. M. Swe have known each other before Ms. M. Swe started working for Sushi Katsuei.

52. Ms. M. Swe has been serving Sushi Katsuei's customers for a long time. Upon information and belief, because of Ms. M. Swe's long-term tenure at Sushi Katsuei, some people called her, a "head-waitress."



53. At Sushi Katsuei, Ms. M. Swe was primary responsible for performing her duties as a server. However, Ms. M. Swe has never hesitated to help other co-workers when anyone asked for her help. On certain days and/or occasions, Ms. M. Swe volunteered to give extra hands to a host and greeted customers, set and furnished the menus to the customers, and cleaned the business site at Sushi Katsuei.

54. On the days that Ms. M. Swe worked as a server, she received her hourly rate above the minimum wage rate(s) and received her portion of the tips that she was entitled to receive.

55. On the days that Ms. M. Swe did not work as a server and/or did not perform any tipped duties (e.g., helping co-workers, responding to the customers' needs and assisting customers, and/or cleaning the business site), Sushi Katsuei sufficiently paid Ms. M. Swe for the service that she performed for the restaurant. On the days that Ms. M. Swe did not perform the tipped duties, she did not and was not allowed to receive any tips.

56. Upon information and belief, Ms. M. Swe did not work for any other employer(s) while working at Sushi Katsuei. However, I am aware that Ms. M Swe attended school at certain point while working at Sushi Katsuei.

57. Ms. M. Swe never had any ownership interest in Sushi Katsuei nor did she perform any managerial and/or supervisory duties at Sushi Katsuei.


58. Ms. M. Swe never had the authority to hire and/or fire any of Sushi Katsuei's workers.

59. Ms. M. Swe was never involved in (and was not even allowed to) conducting and/or participating any of the candidate workers' interviews while working at Sushi Katsuei.

60. I was the one who selected the workers on behalf of Sushi Katsuei.

61. I, Aung Ko Win, affirm under the penalty of perjury, that the above statements are true and correct.

Dated: August 29, 2024  
Flushing, New York

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Aung Ko Win